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APPLICATION NO.	FILI	NG DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/040,469	01/09/2002		David B. Layzell	1998-016-08US	2590	
7	590	10/02/2002				
PARTEQ Inn			EXAMINER			
Biosciences Co	omplex		GELLNER, JEFFREY L			
Room 1625						
Queen's University Kingston, ON K7L 3N6				ART UNIT	PAPER NUMBER	
CANADA					3643	
			DATE MAILED: 10/02/2002			

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)			
-7		10/040,469	LAYZELL ET AL.			
,	Offic Acti n Summary	Examiner	Art Unit			
	•	Jeffrey L. Gellner	3643			
	The MAILING DATE of this communication app					
Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). Status						
1)⊠	Responsive to communication(s) filed on 09 J	anuary 2002 .				
2a)□	This action is FINAL . 2b)⊠ Th	is action is non-final.				
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disp sition of Claims						
4) Claim(s) 1-23 is/are pending in the application.						
4a) Of the above claim(s) is/are withdrawn from consideration.						
5) Claim(s) is/are allowed.						
6)□	Claim(s) is/are rejected.					
,	Claim(s) is/are objected to.					
•	Claim(s) <u>1-23</u> are subject to restriction and/or e	election requirement.				
• •	on Papers					
9) The specification is objected to by the Examiner.						
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner.						
If approved, corrected drawings are required in reply to this Office action.						
12)☐ The oath or declaration is objected to by the Examiner.						
Priority under 35 U.S.C. §§ 119 and 120						
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).						
a)[☐ All b)☐ Some * c)☐ None of:					
	1. Certified copies of the priority documents have been received.					
	2. Certified copies of the priority documents have been received in Application No					
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).						
a) The translation of the foreign language provisional application has been received. 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.						
Attachment(s)						
1) Notice	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of	Summary (PTO-413) Paper No(s) Informal Patent Application (PTO-152)			

Application/Control Number: 10/040,469

Art Unit: 3643

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Claims 1-18, drawn to a method of of growing plants in soil exposed to H₂ gas, classified in class 47, subclass 58.1R.
- II. Claims 19-21, drawn to a method of treating soil microbes with H₂, classified in class 47, subclass 58.1SC.
- II. Claims 22-23, drawn to a method of treating plants with a soil extract, classified in class 47, subclass 58.1SE.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II, and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, Invention I has separate utility such as a method of discarding H₂ gas; and, Invention II can be used to select for H₂ resistant microbes. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

Jeffrey L. Gellner

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600